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TO RUEHC/SECSTATE WASHDC 5094  
INFO RUCNAFG/AFGHANISTAN COLLECTIVE  
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RHEHAAA/NATIONAL SECURITY COUNCIL WASHINGTON DC  
RUEAIIA/CIA WASHINGTON DC  
RHEFDIA/DIA WASHINGTON DC  
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DEPARTMENT FOR SCA/FO, SCA/A, S/CR, SCA/PAB, EUR/RPM STATE  
PASS TO USAID FOR AID/ANE, AID/DCHA/DG

NSC FOR AHARRIMAN

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SUBJECT: PRT BAMYAN - GOVERNMENT TAKES FIRST STEP TOWARD  
ENHANCING JUSTICE

**¶1.** (SBU) SUMMARY: The Bamyan Provincial Justice Conference (PJC), held in the provincial capital November 20-21, brought together Afghan leaders and experts to find the means to improve justice in Bamyan. Stakeholders discussed their concerns in break-out sessions on police, prosecutors, judges and corrections officials, while defense, human rights and public awareness stakeholders joined the various groups to ensure these issues were addressed as well. Provincial participants discussed their concerns with their central government counterparts and outlined a litany of needs (particularly increased salaries, legal training and office resources, such as vehicles). The PRT as well as the U.S. Embassy's Justice Sector Support Program (JSSP) will be conducting follow-up with the Afghan leadership and potential international donors to ensure progress is made on the action items. END SUMMARY

The Participants

**¶2.** (U) Governor Habiba Sarabi hosted Bamyan's Provincial Justice Conference on November 20-21 after weeks of preparation by provincial officials. The approximately 120 provincial officials at the conference included district judges, civil and military prosecutors, district sub-governors, police, mullahs, the Department of Hajj and the Department of Women's Affairs. The INL-funded Justice Sector Support Program (JSSP) and PRT POLOFF were instrumental in organizing the event and recruiting the 30-plus subject matter experts (AIHCR, UNAMA, NRC and Embassy officials/contractors) as well as central government officials. Participants from Kabul included officials from the Supreme Court, the Attorney General's office, and the Ministries of Interior and Justice. The New Zealand government, INL/JSSP and CFC-A provided the necessary logistics and funding support for this event.

Governor Sarabi's Comments

**¶3.** (U) Governor Habiba Sarabi, the first and only female

Governor in Afghanistan, welcomed participants and international support for rule of law. In her opening remarks she pressed for help from the visiting groups to improve Bamyan's justice system. She pointed to the judges earning \$50.00 a month and not being able to feed their families while paying court expenses out of their own pocket, the brain drain of competent law professionals indigenous to Bamyan because of lack of professional opportunities, and the lack of public awareness and knowledge of the law.

**¶4.** (U) Following the Governor, all five of the Afghan national leaders made opening remarks and endorsed the need for rule of law assistance to Bamyan province. To stress the important role justice plays in the life of every Afghan citizen, Deputy Attorney General Samadi quoted the Prophet Mohammed as saying one hour of justice is better than 100 years of worship.

#### The Sessions: Police, Prosecutors, Judges, and Corrections

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**¶5.** (U) Following the opening comments, the conference participants split into four break-out session groups -- police, prosecutors, judges and corrections officers. Each group discussed their sector's challenges, identified potential solutions and sought commitments from the national leaders. On the second day of the conference, each breakout session summarized points, which are reported below.

#### Police Concerns

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**¶6.** (U) The police breakout session involved approximately

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thirty participants, including police chiefs and line officers, four of whom were female. A frank discussion revealed needs and priorities including training of police officers on provisions of the Penal Code, the Civil Code and the Interim Criminal Procedure Code (ICPC). Of particular note was the consistent mention of the need for training on how to be professional officers, with an emphasis on forensics, criminology and interrogation. Their major concern, however, was the 72 hour limit the ICPC puts on their investigation before they are required to turn a case over to the prosecutor. Resource requests by the police group included uniforms, coats, and traffic signs, in addition to the expected report of the shortages of vehicles, fuel, buildings, and forensic equipment.

#### Potential Solutions for Police Concerns

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**¶7.** (U) Legal training on relevant laws for police would address many of the concerns raised by the police participants. Ideally, comprehensive legal training for police would be incorporated into the curriculum of the Regional Training Center (RTC). As an interim measure, a legal training course could be implemented along with additional training courses for other sections of the Bamyan justice sector as early as the spring of 2007. Weather conditions in this mountainous province, however, make it unlikely for any coordinated training effort to take place before the spring thaw.

**¶8.** (U) Although Police Chief Sayeed Ackbar flagged the need for winter clothing, it is not clear that the central government or an aid agency can move quickly enough to provide uniforms or overcoats before spring. This sector also raised transportation issues. An assessment of police transportation is needed to verify whether there is a need for additional police transport over the distances in the province, and whether such a need could be filled by strategic placement of motor vehicle depots. Esprit de corps could be enhanced with the funding of a Police Association and the delivery of professional forensic equipment, perhaps

on a depot basis similar to the vehicles. This would have a short-term morale benefit and a long-term benefit of creating a more professional police force.

Judicial Concerns: Time Constraints, Attorneys, Resources

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**¶19.** (U) Echoing police concerns, the judges also cited the time restrictions imposed by the ICPC as the primary obstacle to the performance of judicial functions. The judges felt the 15 day limit to file an indictment, followed by a pro forma 15 day extension was simply not enough time to adequately investigate anything more than a routine case. There was also a frank admission by the judges that because the ICPC is, by definition, an &interim8 law, it need not be adhered to. It was felt that a temporary law carries less weight than a &permanent8 law and that the adoption of a new criminal procedure code with more realistic time limitations would be very helpful.

**¶10.** (U) Bamyan has no defense attorneys, and the judges expressed deep concern that innocent persons were being convicted because no attorney was available to challenge the evidence presented by the prosecution. Any invocation of the right to counsel by a defendant is impossible to satisfy in Bamyan. The unfortunate result is that the cases of those defendants who invoke their constitutional right are set aside until they agree to waive the request for an attorney.

**¶11.** (SBU) The judicial break-out session also revealed basic resource concerns. Judges complained that there were not enough copies of the law available for them (Note: Copies of the relevant laws affecting criminal justice were distributed

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to judges at the conclusion of the conference). They also expressed concern that cases dragged on too long, that there was a tremendous backlog of appeals and that there were simply not enough judges to do the work. Judges are assigned multiple districts to cover, but are not provided transportation to get to them. The lack of AWD vehicles results in significant trial delays. This in turn, forces people to rely on informal justice systems. As with the other sectors, there was a complaint of poor salaries, which allow corruption to seep into decision making. Several judges also expressed concern for their safety as they traveled to court.

Donors Needed to Address Judicial Concerns

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**¶12.** (U) The JSSP will work to identify donors for case management improvement, indigent defense services and transportation assets. Bamyan officials specifically requested assistance with a case management system and training on the law, ethics and human rights.

Prosecution: Three Categories of Need

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**¶13.** (U) The concerns and needs expressed by the Bamiyan prosecutors were divided into three categories: training, strained relations with the police and central government resource issues.

Prosecutor Training

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**¶14.** (SBU) The prosecutors expressed interest in taking a training course in investigation, criminal techniques and crime scenes, forensics, and other topics either in the province or in Kabul. They would like to be taught by internationals or by experienced prosecutors such as Deputy Attorney General Samedi from Kabul, who was in attendance. The prosecutors do not think they need training in criminal procedure or penal law.

## Strained Relations with the Police

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¶15. (U) The prosecutors raised several concerns about their relationship with the police. One problem raised is that the police hold suspects long after the 72 hours, sometimes up to two weeks. According to the prosecutors, even when the police are told to turn over the suspect and files, they do not. The prosecutors believe that sometimes the suspects are kept by the police to solicit a bribe, and sometimes they are kept so that the police can finish their investigations. DAG Samedi stated that the &military8 unit prosecutors (that can prosecute the police) should be notified and if possible they should arrest the police officers. One prosecutor stated that this would result in threats or worse ) one cannot challenge the police in this way. They also stated that the police will not follow the instructions of the prosecutors. Jointly issued orders from the MOI and AGO to their respective police and prosecutors could help with these issues, as could training.

## Prosecutor Request Resources and Infrastructure

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¶16. (U) The prosecutors were specific about their infrastructure needs during the breakout sessions and stated that five vehicles were needed, including two for the appellate court prosecutors, and that there should be six motorcycles supplied as well. None of the district prosecutors have vehicles. Additional infrastructure deficiencies included buildings, a library, furniture, and communications. There is one provincial prosecutor,s office

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building with three rooms for eight prosecutors. According to the civil prosecutor, 30 rooms are needed, because currently there is no space for the 23 prosecutors who are authorized. The prosecutors also pressed for district buildings. (Note: USAID has constructed and recently opened government buildings in most of Bamyan,s districts. The new offices are specifically for district officials. Bamyan center is an exception, however, due to unresolved issues with provincial officials regarding site location. End Note).

¶17. (U) The Provincial Prosecutor,s Office did not hesitate to request everything but the kitchen sink and went on to request a library, a conference room, 30 desks and 40 chairs, 200 square meters of carpets, a safe, 30 file cabinets and curtains as well as three generators for the Provincial Offices and one for each of the six other Districts. This will require at least 600 liters of fuel per month. In order to communicate with Kabul, the prosecutors also requested nine radios as well as mobile phones for Bamyan center. (Note: Bamyan districts do not have Roshan coverage, and have requested digital phones.)

## Salary, Training and other Benefits

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¶18. (SBU) According to the Civil Prosecutor, the main reason that only 20 of the 43 authorized positions for prosecutors are not filled is the low salary. The average line-prosecutor,s monthly salary is 2700-3000 Afghanis (\$54-\$60), and quite a few have quit. The Chief Civil Prosecutor believes that his prosecutors should receive 10,000-15,000 Afghanis (\$200-300) per month.

¶19. (U) One line prosecutor emphasized the need for female prosecutors, as there are none currently, especially for cases of rape and family violence involving women as victims. Victims will often not want to come forward to male prosecutors in such cases. When asked why there are no female prosecutors, one participant said, &if we cannot get male prosecutors to come to Bamyan with such salaries, how

can we get any female prosecutors that are qualified?8

**¶20.** (SBU) The prosecutors also spoke about personal security and indicated that they would like to be issued pistols. They have been threatened and attacked - one prosecutor was beaten with a stick by a suspect. Another one was slapped and beaten by the Deputy Governor. When the facilitator raised the question of safety, the response was &we have been at war -- we know how to use firearms.<sup>8</sup> When it was noted that an AK-47 is significantly different than a pistol, the prosecutors all stated they would be willing to take a gun safety training course.

#### Possible Means of Addressing Some of the Prosecutors, Needs

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**¶21.** (U) Training on coordination between prosecutors and police would be of immense value due to the fundamental disconnect between these two justice sectors. The prosecutors, long list of resource and infrastructure needs is perhaps most appropriately addressed by the central government, but international donors may be able to assist with some of these issues. Communication equipment and vehicles would make an immediate impact on the efficacy of the Bamyan prosecutor's office.

#### Corrections Issues

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**¶22.** (U) The main concern raised during the corrections discussion was the difficulty of following the laws concerning pre-trial detention and the failure of either the courts or the prosecutors to properly communicate, by way of

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judicial or prosecutorial decree, when a prisoner should be released. Prisoners are held indefinitely without any order from the Court. The corrections officials felt that it was the duty of the prosecutors to write release orders for persons held beyond the thirty day limit for filing indictments, but they noted that they rarely, if ever, receive one. As a result, the prison is overcrowded and filled with people who should not be there. Corrections officials also explained that there are no female corrections officers and that none of the corrections officers in Bamyan had received formal training.

#### Addressing the Needs of Corrections Officials

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**¶23.** (U) As none of the current corrections officers have received any training in inmate management, human rights or corrections law, the Corrections System Support Program (CSSP) will work to identify a donor for this training. Coordination between corrections, the courts and prosecutors needs to be enhanced -- either through training or through the development of protocols for informing corrections officials of when inmates must be released. Identifying a female candidate for corrections training and placement in the Bamyan prison is critical due to inability of male corrections officers to humanely perform their duties in accordance with cultural norms.

#### Comment

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**¶24.** (SBU) Although the central government officials who addressed the conference promised follow up on many of the items requested by the local justice officials, there is a clear need for the international community to make significant contributions to the justice sector in Bamyan. Simple items such as winter coats, communication equipment, motorcycles and training would make a tremendous impact on the services these offices provide to their constituents. Training Bamyan justice sector officials and employees will help build the capacity of the justice system and can be

implemented as early as the spring of 2007, once there is safe and reliable travel to and from Bamyan. Informing Bamyan officials of plans to furnish some of the material and training requests identified during the conference will go a long way to boost their morale. As Governor Sarabi pointed out in her closing comments, failure to deliver on the promises made by the national leaders at the conference will result in further disillusionment with the central government. To help address these weaknesses, PRT appreciates the assistance of JSSP, CSSP and CFC-A as we work together over the next few months to provide a welcome capacity boost to the few judicial officials in the province.

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